Male:	So if you want to ask a question today you're going to need to have a country written on a piece of paper in front, and you'll be addressed by that country. So I have the gentleman from Turkey in front of me here, that's Turkey. I have Costa Rica at the back, so please assign yourself a country and make it easy for us.
	John, you can be…

[background conversation]

Male:	There's plenty of room down the front, gentlemen. If your handicap is less than four in golf you have to come down and sit in the front.

[background conversation]

Kurt Pritz:	Good morning, everyone. Thanks for coming. In a room that's not so conducive to conversation I hope we can overcome that and have a good one here today. The purpose of the meeting is this, stated in kind of a long fashion, that ever since the early days of the Applicant Guidebook, one of the most important aspects of the Guidebook has been the requirement for applicants to retain a letter

of credit in order to sustain registry operations, five critical registry operations in the event that the registry fails.

It's always been seen as the one real protection for registrants in the Guidebook. All the answers to questions in the Guidebook are really promises but this one is a hard piece of protection for registrants, and therefore it's thought to be very important. Lately there's been suggestions around another way to do that, and that is rather than have each registry – and I'm just going to state it very shortly and it's going to be fleshed out more fully here, so don't take this as a fully accurate or complete representation.

But rather than each registry furnish a letter of credit, rather that risk be pooled into some sort of fund and so then each registry would have to pay less than the full cost of their own letter of credit but registrants would remain to be protected so long as this pool could be created where funds could be released in an easy manner at the right time and there are adequate funds to cover whatever registry failures there are.

And so I think what the order of battle is, is a presentation around this new model. What I really want everybody here to do, and I think this is really important: I want you to critically question both the proposed model and actually the existing one. And it's not for the purpose of defeating either one; the purpose is to flesh out or ferret out all the issues so we can start to develop answers to those questions. But once those questions are answered then we feel we have a fairly bullet-proof model.

At this stage it's a very good idea but it needs to be made workable and in a way that affords the same protection to registrants in all instances, has the right amount of participation or non-participation from ICANN and the communities. So there are a series of questions that could be asked; some of them were included in the announcement for this meeting but some you'll have here.

So I really appreciate the fact that you showed up and you're going to struggle through trying to communicate in this big room, and I really ask you to ask questions and start answers to them because what we want to walk away with is a sense of where we need to go to complete answering those questions and then make a determination if we can implement this model, too. So thanks very much in advance for putting your thought into this and participating in this.

Brian, are you going to take over from here? I didn't introduce the panel, but you did? Great. Thank you.

Brian Cute: Good morning, everyone. My name is Brian Cute, welcome to this session. The first thing I want to do is commend ICANN for opening the public comment period on this very important issue and holding this workshop. The purpose of the Continuity of Operations Instrument is a very important one, which is to protect registrants in a new top-level domain in the event of a failover. And that's critically important from a consumer protection standpoint, that in the event of a registry failover that registrants in

that top-level domain have continuity of service – that their names continue to resolve, that the resources are there so that an orderly transition of those registrants and their names to a new registry operator can take place.

This is a program of primary importance to the new TLD round, and again, I commend ICANN for at this very late date opening a public comment period to have a discussion with the community about how we can create a program that really hits the target. And given how close we are to the new TLD round, we appreciate not only an opportunity to discuss this but also I want to say that in my personal opinion that I know is shared by many, that I don't think that this discussion of this important issue should in any way endanger the launch date of the new TLD round as scheduled. And that's critical to state and I know that's shared by the panelists.

So on the panel today we have Antony Van Couvering from Minds + Machines; Richard Tindal of Donuts Inc.; Adrian Kinderis from AUS Registry; and Paul McGrady from Greenberg Traurig and a member of the Intellectual Property Constituency. Also on the phone is Ken Stubbs from Afilias who is co-chairing the workshop here.

Ken Stubbs: Good morning.

Adrian Kinderis: A small correction – it's Adrian Kinderis from ARI Registry Services. The marketing department would be very upset about the whole rebranding exercise if I didn't get that in.

Brian Cute: My apologies, Adrian, correction is noted. Ken, are you on the phone?

Ken Stubbs: Yes I am, Brian. Thank you and good morning, all.

Brian Cute: Okay, you're on a low level but I think we can hear you. Can you try again?

Ken Stubbs: Yeah, I can speak up.

Brian Cute: Okay, thank you.

[background conversation]

Brian Cute:	So at the panel, Pal has a question. We have IPC, Registry Constituency and new TLD applicants represented on this panel. Are the slides up on the screen? Yes? Okay.

So the agenda for this next hour and a half: we'll do an overview of the Continuity of Operations Instrument, an overview of the potential alternative mechanism – the Continuity of Operations Fund.   We'll explain why the Registry Stakeholder Group proposed this alternative funding instrument and have specific discussion points about the two mechanisms. Next slide.

So just a little bit of quick terminology: AGB is the Applicant Guidebook, Registry Stakeholders Group. We'll drop into COI which is the Continuity of Operations Instrument – that's the mechanism that's presently in the Applicant Guidebook; and Continuity of Operations Fund will be COF – that's the alternative mechanism that's come from the Registry Stakeholders Group.

You should also be very aware of the Emergency Backend Operator Comment, that public comment period that's running right now – the EBERO. This is a very critical element to this program. In the event of a registry failover we want not only the necessary resources so that the registrants in a new TLD continue to have their names resolve until an orderly transition can be made to a new registry operator; but having an emergency backend registry operator in place and functioning is an important piece of this.

There is an RFI, pardon me – a request for information – out from ICANN, and I ask all of you to provide comments into that RFI so that we have that platform properly sized and functioning in the event of a registry failover. And the other terminology here is LOC, which refers to a letter of credit which is one of the financial instruments to be used under the existing Continuing Operations Instrument program. Next slide.

So I've just made mention to the EBERO RFI, the close date is November 30th. Please provide comments to that. And also the comment period on the COI and the COF is open until the 2nd of December, and there are the links to both of those. And we urge you all to provide comments into both of those processes. Next slide.

Just a list of some key reference documents here. Let's start at the beginning: what do we have presently in the Applicant Guidebook as a mechanism to protect registrants in the event of a registry failover? Next slide.

In the Applicant Guidebook under the Continuity of Operations Instrument, applicants are required to provide a cost estimate for funding critical registry functions on an annual basis. And the Guidebook defines critical registry functions as DNS resolution, operation of the shared registration system; the WHOIS service, data escrow, and the provisioning of a DNSSEC signed zone. Those are the critical registry functions that you have to have in place for purposes of continuity of operations in the event of a

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failover, and again, this is to protect registrants so critically important. Next slide.

In the Applicant Guidebook under the Continuity of Operations Instrument, applicants must provide evidence that funds for performing critical registry functions will be available and guaranteed to fund registry operations for a minimum of three years following termination of the registry agreement. Next slide.

And applicants must secure those funds under one of two ways: through an irrevocable standby letter of credit issued by a reputable financial institution or a deposit into an irrevocable cash escrow account held by a reputable financial institution. Next slide.

So the elements under the Continuity of Operations Instrument is a registry applicant has to calculate their costs of operations, looking at those critical functions; and they also have to project their domains under management. So as a new applicant, I know what my costs are. I am projecting 50,000 names at the end of year three, a million names at the end of year three, five million names at the end of year three – and come up with a cost per year. Multiply that by the three-year period and that's the cost that you have to have available guaranteed in one of those two types of instruments mentioned. This is just an example. There'll be a table a little bit later on that is really a straw man of how some of these calculations could work out. It depends of course on what your underlying cost structure is for registry operations and what your projected DUM is going to be.

Some of the concerns that were raised about the Continuity of Operations Instrument when it appeared in the DAG were that when you run the numbers of what your projected DUM could be and your cost of registry operations, it looks as though the COI could generate some very significant dollar amounts – significant enough, in fact, that they could be barriers to entry. And whether or not new TLD applicants had sharpened their pencils and done some of these calculations to really understand the dollars required in addition to all of their costs for filing a new application and running that business was unclear.

The second concern was that if in fact the COI would generate significant dollar requirements based on your business model and your costs of operations, that that could be an incentive for a new TLD applicant to in fact underestimate their DUM and their costs for the new TLD application so that they would not have to tie up as much cash.

So these two concerns had been communicated. The Registry Stakeholder Group had discussed them at length. There had been exploration done as to whether there were alternative instruments or vehicles that could be used to satisfy the requirements of the program but not impose potentially significant cash requirements on new TLD registries, ICANN staff did its own exploration to its credit as did registries, but these are two of the concerns mentioned.

Oh, I'm sorry – DUM is domains under management, thank you for those online. So that's the Continuity of Operations Instrument

overview and some of the concerns that were raised about it. Now let's move to the Continuity of Operations Fund, or COF.

So what is the COF? The COF is an alternative proposal that came from the Registry Stakeholder Group. The concept itself was put into comments by the Registry Stakeholder Group and some of the projected impacts on the table that I'll show you in a little bit were developed by Afilias and PIR to be examples of potential impacts under the COI.

The COF is an alternative proposal that would, in lieu of having a registry applicant calculate its registry costs and then multiply it by 3, would have them pay a flat $50,000 per application and would also allow potentially a $0.05 per registration element so that we could create a baseline fund, a single escrow fund for the purpose of protecting registrants in the advice of a registry failover using two mechanisms: a flat cost per applicant plus a potential charge per registration that would provide flexibility to increase the fund as needed to prevent against registry failovers.

The other element of the alternative proposal would be that the fund should have a floor. The fund, if created, should have at least the baseline amount necessary to address registry failovers as they occur, but also a cap. This shouldn't be a fund that has no limit and that runs up to large numbers that go beyond the resources needed to address registry failovers. Next slide.

So why is this relevant? Again, getting into the purpose, as Kurt said – it's not necessarily to knock down one or the other but to

compare and contrast these two approaches to addressing this problem. Why is this relevant? Well, one the one hand the concerns that I noted before that the COI could create barriers to entry because of the dollar amounts required depending on the new gTLD applicants' calculations of costs and the projected DUM; whereas the alternative mechanism, the COF, provides a fee that is not dependent on new TLD applicant calculations or projected DUM and costs and provides flexibility to grow the fund over time. Next slide.

This addendum, which gives – and again, it's a straw man. It shows how these calculations could actually produce numbers that become very high very fast. It depends on what your cost of operations is per domain, whether you're using $2 per domain or $1 per domain or $3 per domain. But this is a table that in illustrative terms shows what some of these costs could be under the COI as proposed. Next slide.

So the COF, to explain that a little bit more from the Registry Stakeholder Group proposal: it would provide contributions from all applicants into a single escrow fund. And one example here is if you took $50,000 per new applicant and assumed 360 new top-level domains actually going into the root – new applications that have been approved and go into the root – you could generate a baseline fund of $18 million. There's no magic to this figure. This is again, an example of how you could fund an escrow that addresses registry failover.

You also have the $0.05 per registration if it's determined that that funding level is insufficient. You could grow that fund by applying a registration $0.05 charge. Next.

So again, under the COF the escrow fund would be managed for the sole purpose of providing necessary sources for continuity of operations and an orderly transition of registrants from a failed registry to a new registry, and there should be a cap on those funds. Next slide.

So at this point I hope that's given a clear enough view of the different aspects of the two different proposals. What I'd like to do now is engage the panelists and give each of them in turn, to start out about five minutes to give their views on both mechanisms, both the pros and the cons. So if we'd start going down the line here – Antony, if you wouldn't mind?

Antony Van Couvering: Thank you, Brian, and thanks everyone for recovering from last night and showing up here. I've identified the existing COI mechanism from early on as I guess you would call it a failure of imagination, or perhaps of math. Effectively, what is being asked of applicants is to insure themselves for the full amount of a possible failure and everyone to do it. So what ICANN is saying is that they want to protect against 100% failure – that is, every single TLD applicant will fail.

That's what effectively you're being asked to do and you're being asked to do it in a way that unlike ordinary insurance, where you

purchase basically a risk option; you're asked to put the whole thing in money up front. So imagine you were buying a car – you'd be paying for the full amount of the car, you couldn't finance it. Then you'd be paying for the risk of totaling that car, so double that; and perhaps even for the cost of somebody else's car. So your $50,000 car, instead of a $10,000 down payment plus payments every month, you'd be asked to pay $150,000 up front. And that's kind of what's going on.

So it does create a significant barrier to entry, and it hasn't been communicated very well to people really what this implies, so I think it also creates a significant risk of failure because people are going to find that they need to segregate these funds. They can't use them for operations, they can't use them for marketing – they can't actually do the business of running a registry. And so in an excess of caution to prevent failure, ICANN may in fact be creating some.

That said, it is hard to envision how else to do it, and the reasons for that are that we haven't had a bunch of new gTLDs before. So we don't know what it costs to transition things; we don't know a lot of costs. We don't know what the risks are. And to my mind, this really stems from the continued reliance by ICANN and many other people of "Oh, we've got one model and it looks a lot like .com." So we see this in the EBERO also where the people who want to be an emergency backend registry need to have experience with high-volume gTLDs. Well, excuse me, but the ones at risk

are the low-volume ones.   You should be asking for experience with low-volume gTLDs.

And although we haven't in the gTLD world had a significant experience with transitions and failures, there have been plenty of transitions in the ccTLD world. So there are some data points here where we can begin to estimate what these costs are. And in my experience, they're not nearly as significant as the COI numbers would suggest. So that's a critique.

That said, I'm not convinced yet that we have a better mechanism that will answer to what ICANN's needs are in this, which I submit to you are very different from applicants' or registrants' needs. It might be useful to make those distinctions.

With regard to the COF, the proposal on the table which I should reemphasize is a particular instance of a general guideline put forward by the Registry Constituency, which I agree with – that is to say, some sort of pooled or shared risk – it has some elements that I don't like although it has many that I do.

The elements I don't like is the fairly significant upfront fee, which I suggest is going to be opposed by brand owners with some justification, because many of them will be running very small registries; and will be another burden on the small registries themselves. So that's one thing I don't like about it.

The other thing is effectively, the inverse of that is that it favors big, big registries, although admittedly the COI really makes it very difficult to run a big registry. So those would be my points.

My aim in trying to fix this is to make it more equitable, to have it make sense which on the face of it, the COI makes no sense at all. But I think the COI, although it has a lot of flaws in my opinion, is not worth jettisoning if it delays the program. That is I think my primary concern in this. Thank you.

Brian Cute: Thank you, Antony. Adrian, please.

Adrian Kinderis: Thank you for the opportunity to contribute today. Antony's done a terrific job I think in summarizing a lot of the key issues, and so I'll be brief in order to try to facilitate some good debate and some good discussion today.

The points I do want to make: I think it's important to know that I don't think, at least in my opinion, that the COI is broken. This is not an alarmist conversation here. What we are looking at doing is looking for enhancements or indeed revisions, but we could actually go with what we have. And is it perfect? Well, in Adrian's opinion no, but there's a lot of the Guidebook that doesn't suit Adrian so that's okay. But there's no reason to think that we need to delay the program nor throw this out in order to look at another model.

That said, I think it's healthy to discuss ways that we can enhance this offering and try to look at the core mission of what this particular instrument is trying to do. And I think that also

shouldn't be lost here, and I know we've covered it today but it is worth saying again – that ICANN is looking for stability and integrity of the internet, and creating barriers to entry and barriers to competition is not that mission.

So in ways that we can reduce those barriers to entry and assure that we get appropriate competition and participation whilst maintaining the stability and integrity of the internet, then that's what we should be doing.

It's certainly been our experience in talking with applicants that for some reason the COI gets lost in the communications; and they get a little excited about their business plan, they get a little excited about where they're going to go and they start looking at registry operators and so on and so forth.   And then you come across this COI mechanism – "Well, what's that?"   And then they start drilling down into it and their jaw drops, and all of a sudden they've lost a bit of momentum.   And I don't think that's what the mechanism should be for.   It should be once again for making sure that it maintains the stability and the integrity and that it promotes competition.

So I'll stop there and once again look forward to the heated discussions between Richard and myself.

Richard Tindal: I liked it.   So ICANN has chosen the most conservative approach to possible failure in your registries.   They've chosen to cover 100% of the risk as Brian said at the start, and they've asked for a

cash or cash equivalent to cover the contingency that every registry could potentially fail.

And I think there's three reasons why they've done that. First of all, ICANN's primary mission is stability, and 100% risk coverage is the extreme of stability coverage. I think the second reason is that there's no precedent for this program. There's no meaningful precedent for us to assess the future risk of a program like this because it's never been done before. And thirdly, and perhaps this is one that's not as well known, is that there's likely to be quite a high correlation of risk between applicants because for a variety of reasons, including the fact that a lot of applicants are being advised by similar parties I think a lot of applicants are going to make similar risk assessments and risk assumptions.

And what that means is that if a bad assumption is made then that bad assumption is likely to affect a lot of applicants, a lot of registries. So said another way, if a hurricane hits a house on a street it's likely to take out a lot of other houses on the same street. So I think those are the reasons why ICANN's chosen to be quite conservative in this.

Is 100% risk coverage too conservative? Do I think that 100% of registries are going to fail? No, absolutely not. The challenge that we have is that we don't know what that percentage should be. We don't know if 70% are going to fail; we don't know if 50% are going to fail; we don't know if 10% are going to fail. We don't know if one registry fails, will it represent 90% of all the registrants? We don't know these factors and so it's extremely

difficult to apply science to some sort of shared risk pool because we don't have data to support that.

So looking at the specific proposal that's on the table, the straw man, I see some major flaws in that proposal. First, there is no science behind the number. I understand the $20 million cap is a straw man for discussion, but that could be $40 million, that could be $50 million – we don't know. There is no basis for assessing the magnitude of a shared risk pool in the proposed COF instrument.

I think another significant flaw in the COF proposal is that it's a sort of one-size-fits-all proposal. The way it's structured, it has everyone paying very similar premiums. It has potentially very large registries paying similar or an identical premium to very small or community registries. It has risky or poorly-thought through TLDs paying the same premiums as very conservative or very carefully executed registries. And so on the analogy I think that Antony raised as car drivers, it has the 22-year-old with a record of car accidents paying the same premium as someone with a long history of insurance without any accidents.

And so I agree – I think the net result of this is that the proposed COF will tend to favor large registries. And as we'll probably be, Donuts will probably be I expect one of the medium or larger registries potentially, we could possibly favor that sort of approach. I think it would actually from a business perspective favor a company like mine, but nevertheless I think it's poor policy

to have a risk pool structured around a presumption of equal risk and of equal likelihood of failure.

Brian Cute: Thank you, Richard. Paul? And Paul's got some slides he's going to walk through for you to follow.

Paul McGrady: Thank you.   Just a housekeeping note: although these are on Greenberg Traurig templates, these are not necessarily the views of Greenberg Traurig or our various clients. There's no time to poll everybody for something like this so we should just consider these to be my personal opinion for now, and hopefully the rough consensus of the IPC who have sent me here today.

You'll also see in the slides that I refer to the COI abbreviation for what we're talking about. We've defined COI and COF today, previously, so I'll switch to COF so that I'm with everybody else. It really should be COIF, which is an insurance fund is what we're talking about, but I'll get Karla clean slides that she can load later so it doesn't appear that I was opposed to a Continuing Operations Instrument, which I'm not opposed to. Take me to the next slide, it would be great.

Alright, so the first issue is the COF puts future end users at risk. It allows market entrants who don't have appropriate funding levels to enter the market. If you can't meet the Guidebook's current requirements, you're already dramatically undercapitalized

– you have no business applying. For the ICANN Board, I say if it can't meet the current requirements, don't approve them.   The current requirements have been in the Applicant Guidebook for a long, long, long time now and essentially people who have considered getting into this business knew that this was out there. Next slide.

The COI is a redistribution of wealth mechanism. For a .brand applicant, getting a letter of credit is a fairly simple thing. You call up your banker, you say "Get me a letter of credit for this amount drawn on this line, and I need it to ICANN by Tuesday." They charge you a small setup fee because you've already got a line of credit in place – we're talking about $2000 total perhaps to do something like that. I'm going to mess up the COI and COF, I apologize.

The COF requires .brand applicants to now pony up $50,000 instead of the administrative fee which they would essentially be paying, so that the additional money that they have to pay per string to do this, essentially that money is taken from the .brand applicant and redistributed to the shaky startup that shouldn't be applying.   And it's subsidizing the shaky startup's cost of operations. It's strict wealth redistribution.

I ask then what's next? Will there be a mandatory cooperative advertising program where everybody get to buy at .brand's advertising rates? Will we have to then share benefit plans? How about a mandatory buy-in cooperative in order to drive down the costs of shaky applicants? At some point we have to say "If you

don't have enough money to be in business we're sorry, but you need to figure out how to get enough money to be in business." Next slide.

The COF implies a uniform level of risk. The .brand applicants who apply, I'm not saying that those sorts of companies never go out of business. I suppose they do, and I think that someone down there already mentioned this. We're not talking about the same risk profile. We're talking about undercapitalized, shaky startup registries who got in the door because they got $48,000 redistributed from a .brand into their business so that they could come in at this $50,000 price point for their failure costs versus a .brand applicant – and this was essentially a small part of that .brand applicant's overall budget structure.

I say again to the ICANN Board if you allow a rewrite at the eleventh hour, you have to have an opt out mechanism for .brand applicants. We're not the same risk profile and we shouldn't be lumped in with everybody else. If we can provide a letter of credit I think it's essential that you let us do that and get us out of this pool, this risk pool with all the other shaky folks who shouldn't be applicants in the first place. Next slide, please.

The COF makes ICANN an insurance provider.   Providing insurance is not part of ICANN's mission, at least not that I've been able to locate anywhere on the website. I don't know if ICANN even has an appropriate insurance issuer's license from the state of California in order to issue such a policy or be involved in this business. The heavily one-sided Guidebook which was written

by ICANN and therefore favors ICANN, and if I were writing the Guidebook I would have written it to favor my clients, too – no problem in theory with lawyers being good lawyers – that heavily one-sided Guidebook is not going to protect ICANN from a regulatory investigation or complaints regarding its insurance business, especially if that insurance business is unlicensed.

I will say this: if the ICANN community… I'm going to be clear about this and I apologize for being so plain-spoken.   If the ICANN community is looking for a really clear-cut easily litigated issue to tee up to bring round one to a halt before it opens, this is it.   Unlike all of our chatter over the last two or three years over this or that issue, this one has a price tag.   We already have clients who said "Okay, I'm going to do one string," "I'm going to do four strings," "I'm going to do six strings."   Okay, add $50,000 times six strings and it's easily cheaper to sue on this issue.   It's a winner and it will tie up the process.   Okay, so for anybody in the room who has a vested interest in allowing this process to move forward, this is not the issue for you to back, okay?   Next slide.

And the COF hurts backend registry providers who back it. If you are a backend registry provider and you are selling to .brand applicants right now and you back this, you're going to have to explain to the .brand applicants why you decided to add on an additional $50,000 per string cost for them. You will be asked about this in your RFPs that you receive – "Did you back this? Did you not back this?" This is also in addition to the fact that by reducing the barrier to entry, or the cost of being I guess

financially stable in order to be an applicant, each shaky new TLD applicant we put out there, brands have to buy a bunch of defensive registrations for anyways, but that's a more philosophical issue and that's why it's in parentheses.

The bottom line here is that if you're a backend registry provider and you see your future in selling to .brand registries who will be more stable and who will actually be around to pay your bill, you need to get on the record now as being against this. I suggest press releases and letters to the ICANN Board telling them you're not for it. The bottom line here is if you are someone who is selling to .brands and you are advocating a position that's going to add an additional $50,000 cost that's a bad situation. And so I actually think that the COF hurts backend registry providers who are trying to market into that space.

I think that may be my last slide. Was there one more? Okay. It is my last slide, alright. Thank you.

Brian Cute: Okay, thank you Paul. And Ken Stubbs, you wanted to make some comments. Are you there? Ken, we can't hear you.

Ken Stubbs: Hello, Brian?

Brian Cute: Yes, we can hear you.

Ken Stubbs:	Yeah, hold on for just a second… Yeah, there are a couple of issues that were brought out by the panelists in the previous discussions that I'd at least like to address.

First of all, the reliance and the dependency on information provided by the applicant in computing the amount of the requirement under the current draft applicant guidelines really leaves the whole process open to gaming. There's no penalty that I can find in the evaluation process at all for somebody underestimating. As a matter of fact, we could argue that even though a potential registry anticipates let's say a million names under management, it would be very easy for them to put projections out showing 25,000 to 50,000 names under management and pay the relevant operating costs based on that level; and argue if they're wildly successful that they were just trying to be conservative.

So my personal feeling is that it really opens the process up for gaming there, number one. Number two, the information that's put out there with respect to the brands, as we see it there's an obligation that, it's my understanding, in the DAG that requires the escrow to include ICANN fees. The minimum ICANN fee is $25,000 per year, so there will be a requirement for that $75,000 as well.

I understand the comments that were made by the last gentleman from the IPC and it's very difficult to argue that if Cisco, which is

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sitting with in excess of $40 billion of cash offshore decides they want to get into it, it's pretty much a no-brainer as far as their ability to handle the financial burden of running a registry. If that be the case then why don't the brands argue that ICANN's upfront fees are discriminatory because it's not going to take nearly the amount of resources on the part of the ICANN staff and their contractors to evaluate the financial information from listed corporations, multinational corporations?

I think what we're trying to achieve here is some sort of a balance that would be equitable for the entire community across the line here, and I think that what we're proposing is an awfully good start. Thank you, Brian.

Brian Cute: Okay, thank you, Ken. I'd like to ask all the panelists to respond to the next few questions in turn and then we'll open up for Q&A from the audience. We wanted to put all the comments from the public comment period up on the screen and we can't fit them all in one place, but again, I encourage all of you after the session to go home and as busy as you are prepare some responses to this public comment period and answer the questions that ICANN has posted.

[background conversation]

Brian Cute:	Certainly. Adrian would like to reply to Paul McGrady.
Adrian Kinderis:	Yeah, actually it's more just clarification and I typed it on the, which I believe everyone can see just as well… So with respect to .brand, let's just be careful about .brand because I think that first of all the Guidebook never references .brand and so we need to be careful about causing a creating of its own separate category.
	However, when we're talking about corporate clients, even to say .brand because you can have many diverse .brands; and in talking to our clients that are brands you can have everybody that's say a Facebook-type applicant that can have hundreds of millions of registrations underneath it and then you can have maybe a Nike that's only ever going to have five names underneath it.
	So I think we've got to be careful about categorizing brands, and I think we need to be a little bit more specific about that because there should be a significant COI for a .facebook if indeed. But if you're talking about volume, now there may be another restriction about (inaudible) but if we own the brand and we are the registrant for those names internally, if we go down then there should be no COI. So yes, we can get into conversations.
	So I think really you might want to talk about whether it's single registrant under a TLD because maybe that will have other implications. So I just wanted to be careful about talking about .brand on a couple of fronts: number one, it's not mentioned in the Guidebook, and number two that tends to infer potentially a small

registry. I think everybody's assuming that when in actual fact that could be quite significant. So I just wanted to make a point of clarification, that's all.

Brian Cute: Thank you, Adrian. Paul and then Richard.

Paul McGrady: Sure, two things. One was the comment on the call where the question was why didn't brand owners object to ICANN's discriminatory fee where we're going to be charged $185,000 to apply and $25,000 a year, although we will have no compliance issues; and that sort of is our good faith, no objection, going along to get along channel. I think the implication there is that if we didn't object to that why are we objecting to this just because it's discriminatory now and sort of in a clearly mathematical way.

I sure would hate to see the brand owners' good faith in this process by not challenging ICANN and insisting on differentiated pricing early on in the process to be used against us now as an excuse to pick the pockets of the .brand applicants. And to the point of sort or retitling .brand to single registrant TLD, I'm going to sort of politely not cooperate with that because I think the math is the same for a big .brand registry versus a small .brand registry. It's still going to be cheaper…

Imagine the biggest .brand registry that you can. It's still going to be cheaper for them to get a letter of credit from their banker than

it will be for them to escrow tens of millions of dollars into an escrow account. The loss of opportunity costs there of having that much money in the bank, the math doesn't make sense no matter how big you are. So if I keep saying .brand everybody will forgive me for sort of not adopting the new definition.

Brian Cute: Richard?

Richard Tindal: I just wanted to make two quick clarifications to some things that Ken said on the phone – they're sort of technical things so I'll be quite quick. The AG does require that applicants make COI projections that are fully consistent with the internal projections that they've made and with the representations that they've made to their investors. And so to provide if you like, an understatement would be a breach of that. I appreciate that people can lie but there are many places potentially if you want to make misrepresentations you could do that, but there is a requirement in the AG that you be consistent with your own internal projections.

Secondly, I don't believe that the COI that's in the AG at the moment does require the inclusion of the annual $25,000 minimum ICANN fee. It's certainly not listed at question #50 as one of the five requirements and we do have Kurt here, so perhaps the ICANN staff could even clarify that.

Brian Cute: Thank you, Richard.   Just for those online who have some questions I just ask you to be patient for a moment.   I'm going to ask the panelists to respond to a couple of questions one time through and then we'll open it up to Q&A and have about a half an hour for more good discussion.

I'm referencing two of the comments from the public comment in ICANN.   I'd like each of the panelists to respond; try to keep it to three minutes or so.   What criteria should be used to ensure sufficient funding and a mechanism to provide registrant protections?   So what criteria should be used, and also if we were to do a COF fund, what assumptions should be made in creating the basis for that proposed fund?

A question I have is are there benchmarks out there for transition costs that are knowable that we can use to begin to build the model for risk and risk assessment?   Antony?

Antony Van Couvering: Thank you, Brian.   I believe this actually gets to the heart of the matter.   What criteria should be used to ensure sufficient funding? Well, surely it has to do with the cost of a transition.   We have a lot of examples of transitions, not necessarily in the case of failure but in the case of transitions.   In the gTLD space we have the case of .name – I don't know the figures but it's there.

In the ccTLD space there have been many transitions between owners and transitions between registry platforms, and many of them have been done either under duress in the case of a

redelegation or have had to be done quickly. So I find in general an unwillingness on ICANN's part to look at the ccTLD world, which I think is an excellent comparable for many of these things because many ccTLDs are quite small, they serve communities – they're going to resemble many of the cases that we see in the future.

So to use an example, we are currently the backend provider for .fm and that is not an enormous but a significant zone; and that was transferred over a weekend with EPP. I think the total cost might have been a few thousand dollars.

If you look at the EBERO, and I should remind you that when you're putting together this COI it's not the cost that your registry provider is going to charge you for these five critical functions – it's the cost of the transition that is there. So the EBERO really insists on this sort of big iron model which I suggest is highly inappropriate for many of the registries, particularly those that aren't doing well and are likely to fail. So it's loaded up with costs that are unnecessary.

So what are the criteria to ensure sufficient funding? Look at what's happened in the past and there are examples. The mechanism is, I would say it's cash or that works. The proposal that the Registry Constituency that we're looking at now, or a version of it, is another way. There is also the possibility of insurance. There may be, and I've heard of the possibility that private insurers will insure you for this sort of thing and that

should be something that ICANN should accept, whether it's in the form of a letter of credit or an insurance policy or what have you.

So if you want to look at the fund, what assumptions can be made in creating the basis for it? Well, I think one assumption should be not 100% of the registries are going to fail. As Paul has said, it's a trivial cost for a brand. They're going to call up their banker and say "Give me a line of credit, have it to ICANN by next Tuesday." So we don't know. There was a proposal for expressions of interest at one point and then we would know but now we don't, but we don't know how many brands are going to apply but a significant number of the applications are going to be from brands and they're not going to fail.

So 100% is stupid. That's one assumption that we should bear in mind. So there are different mechanisms to be used and I think ICANN should be broad in how it allows that to happen, particularly from a global perspective where levels of credit from AAA-rated institutions may be hard to come by in Russia or other places; and it should begin to… We know that the risk is not zero and we know it's not 100%. It's somewhere in between, and you know, even though you can't nail it down I think it is not credible to suggest that because you cannot pin it down very exactly that you can't find a reasonable number. Thank you.

Brian Cute: Adrian?

Adrian Kinderis	Once again it's tough following Antony – he made some good points. I think the only thing I'll add that I think is… I've made the comment once again in the chat, and I think Jacob Williams makes a very good follow-up. He says here that the answer he's received from ICANN regarding the COI is "Applicants are required to provide their own estimates and explanations regarding the cost to operate the critical registry functions."

So I think when determining, which is a great point. So when determining this I think it should be put upon the applicant to justify how much money they've set aside and why they have as far as an instrument, because if I am a brand that is a single registrant and I've only got five names that I'm using internally, if I decide that I don't want to have that registry anymore or indeed I go (inaudible), it may well be that I don't need to transition to a new registry because there's no names to transition. So if that was my justification in my application to ICANN that may well be legitimate.

So I would like to see that there is, and my comment was ICANN isn't out to deliberately fail folks. It's not looking for reasons to fail folks. If you can provide justification within your application for a whole range of issues, ICANN wants to pass people. That's why it's doing the program. So I think it's really going to come down to how bona fide you are in your reasoning regarding addressing those issues of COI. So I hope I made some sense.

Brian Cute: Thank you, Adrian. Richard?

Richard Tindal: Yeah, I think the cost part of it is the easy part. I think there's lots of data points on what are costs to perform those five functions; I think there's a number of data points as Antony said on how to transition. So I'm less worried about our ability to estimate costs. I think the hardest part is estimating risk and for all the reasons that have been previously discussed.

And so I agree with Anthony again that I think a private insurance approach is the best approach, where individual risk is assessed by people who are expert at doing that. I favor that approach significantly over a sort of lumped in pool fund approach such as the straw man proposal that we're discussing from the registries. I think individual insurance would be a much more efficient way and successful way of ensuring risk than doing this sort of lumped in pool.

And as I've listened to the comments that Paul made, many of which I agree with, I think that if we look at the actual math of the proposal that's on the table in the COF, that if in fact the brands are substantially reduced that then for other applicants the numbers then become not $50,000 but $100,000, or perhaps $150,000 as a baseline. And so I really favor the private insurance approach far more, and I am aware that there are already private insurance providers that are very interested in this who are exploring it and

who are starting to talk to applicants. And I think that's going to be the path that's going to be the most fruitful going forward.

Brian Cute: Okay. Paul, then Ken.

Paul McGrady: I'm sure I'm not going to be helpful with this answer because I don't think that there are criteria that you can use to put together such a fund. It's just not in ICANN's competency. They're not an insurance underwriter, and even if we had three years to do this instead of three months to do this it simply even wouldn't get done in that amount of time.

And again, how do you successfully build this fund? I say not on the backs of .brand applicants. So again, that's not helpful. What we've heard, essentially the genesis of the conversation was that the registry house was concerned about applicants who, if they fun the escrow because they're not creditworthy and can't get a letter of credit, they won't have money to advertise. And they were also worried about applicants who might be tempted to bake their projections in order to reduce the cost of the escrow.

I say that the COI is not the primary line of defense to protect end users. I say the evaluation process which we're all happily paying $185,000 for is the line of defense to protect end users, and that the evaluators should keep people out who don't have sufficient funds

to do advertising and escrow the COI; or people who are the kind of people who would bake their balance sheets in order to get in.

And so the issue of private insurance, if you can buy private insurance that sounds lovely, but in terms of a last-minute eleventh hour change there's no way. I can't even get an insurance license between now and January 12th. There's physically no way to accomplish this goal in time, and even if you could accomplish it as we've all heard with different risk profiles, it's just not a practical solution.

Brian Cute: Okay, Ken and then Antony has one follow-up and we're going to go to Q&A. Ken?

Ken Stubbs: Yes, can you hear me?

Brian Cute: Yes.

Ken Stubbs: There are a couple of questions here.   Number one, the presumption is – and Paul, I'm not a lawyer. This is a legal issue that would have to be discussed but the presumption is that this in fact would make ICANN an insurance company, as opposed to the funds being deposited in a trust with a document similar to what would be required under a letter of credit, to allow ICANN to

submit to a trust a request for a release of funds to cover a potential failure – number one.

Number two, there's one issue that has pretty well stayed off the radar in this discussion. I listened to the JAS proposals earlier in the week and they're talking about the possibility of ICANN underwriting or some fund underwriting the requirements for the COI, and this has me very concerned as well. Also, I think points have been made. We don't really have any clear studies; I haven't seen anything actuarial available to indicate what the potential failures might be.

So if we haven't seen anything, and the ICANN community would probably have the first access to this kind of information, I'm very concerned about insurance companies when it comes to… Once you move off the top tier – once you get away from the Cisco's and the IBM's and the BMWs and stuff like that, and you start moving down to the middle tier people where the credit ratings are not as high, I think you're going to find a significant amount of reluctance to write these bonds.

And I would say we have a situation there where that process actually discriminates against a number of people who very well may have the resources to do it if they don't have to double up in an escrow situation – number one. Number two, you might as well take all of the small IDNs that ICANN is lobbying for, the potential to reach out to a lot of these communities, and throw them right out the window. Because I'm very skeptical, having been involved in banking and also being a CPA as to whether or

not they're going to be able to get that kind of a support. Thank you.

Brian Cute: Thank you, Ken. Antony, then questions.

Antony Van Couvering: I would like to think of another way to look at this. As I mentioned before, the cost that needs to be estimated is the cost of transition; not necessarily what your current provider, your backend provider is charging you for these five critical functions. And in that sense, I don't believe that it is necessary for you to look at an EBERO, an emergency backend operator, for those costs.

I don't see why ICANN can't allow you to contract or make an agreement with another party to transition you over at a fixed price in that case. As I said before, I don't believe that the registries that are at risk of failure are those with particularly high volumes. I think if they're doing high volumes they're going to be doing pretty well, and you will have no lack of takers even before a failure to buy them or run them or so on. We've seen Verisign do that in the past, even with ones that aren't doing well.

But if you were able to make an arrangement with another provider or another party to transition over, it seems to me that that could be a number fixed in advance and an agreement made to do so. Furthermore, if you are – as is the case of most people –

contracting with a backend registry operator, you don't even need a transition necessarily. If the infrastructure is not changing, simply that the business of the registry is failing, there's nothing to say that you can't have your current registry provider agree to continue to provide those five critical functions with no necessity of transition. That would get rid of a lot of costs there.

So I think again, the comment was made about one-size-fits-all. It should not be assumed that there will necessarily be a migration of data from one backend to another, and it should not be assumed that this migration is necessarily costly. It certainly should not be assumed that it's going to be a transition of a million-name or more zone. I think that that in fact is a highly unlikely case.

So I think there are ways to look at what the actual cost is, not necessarily by saying "Oh, it's this unknown world – who's going to raise their hands and how much will it cost?" but on the basis of previously-struck agreements with competent providers to do so. And in that case, we could have a Continuing Operations Instrument as it is now but at a much lower cost.

Brian Cute: Thank you, Antony, and we really want to get to questions. I know there's folks waiting patiently online and in the room, too – there's microphones down at the bottom of each stairs. Can we start with the first online question?

Francisco Arias: This is a question from Jeff. He says "Assume you have one million domains under management in years one to three. You pay $500 per domain name to a backend operator. The question is how much should your COI be?"

Male: Was that from Jeff Neuman? Is that you, Jeff? Yeah, please elaborate, thanks.

Jeff Neuman: Every one of you gave a different answer. The problem is, this is a pass/fail requirement from ICANN. You either get a 1, you get a zero, or you get a 3 if you actually have an instrument in place at the time and assuming it's acceptable. If you get a zero on this you fail your evaluation – you can't get a zero on anything.

All that said, the fact that you all gave different answers, the fact that it is not what you pay your backend provider but what it would cost a third party to transition; the fact that ICANN won't even get any information from any EBERO provider until the end of November; the fact that the application period starts January 12th – all of that combined is such great uncertainty, and the fact that you all are confident that you can present some numbers is great.

I can make some numbers up off thin air. The fact is, and maybe this is only our registry, but I know our registry has never broken down numbers by the five critical functions. We just don't – it's a fiction, it's made-up.   It's what ICANN made up and it's

important, but you know what? Nobody does that now. You'd be guessing. You'd be putting numbers in.

As you guys said at the beginning, there's an incentive to lower your numbers in your business plan because the lower the number, the lower the fund – or sorry, the lower the number, the lower the amount you'd have to get. So all of this is being made up, no one truly knows what it costs a third party to provide.

There's been zero failures to date, and I'm not talking about marketing failures or business failures or when you subjectively think a TLD has failed. Not one TLD that's been launched has failed according to ICANN's criteria. The assumption of 100% is just ludicrous as Antony said; and of course assuming 0% would be ludicrous, too. But all those factors combined, and the fact that ICANN continually says "Well, what do you guys think?"

No. We need to give applicants concrete guidance because they're asking now. If you tell them in December it's too late if you open it up in January. So some clear guidance would really be helpful. And Dan, just saying "What do you guys think?" is really not acceptable to applicants out there.

Brian Cute: Okay, Dan and then we'll go to the next online question.

Dan: Thanks, Brian, and thanks for that, Jeff. I initially was coming up to answer Jeff's question which I think sort of morphed into a

comment which we take very well and understand it, and thanks for that.

I think the question got answered first, which is the amount you have to set aside is not the amount you pay your backend provider. It's a different amount; it might be the same by luck but it might not be the same. It's the amount you would have to pay a third party to provide those five critical functions.   So point well understood.

So I just wanted to take that one, and I think that's been asked and answered now. I was going to give the same answer. I think if there are more questions like that, if they're specific questions like you had in the chat room about "How are we supposed to calculate this?" or "How are we supposed to do that?" let's direct those to newgtld@icann.org which is our process for answering questions from potential applicants.

So here, the rest of today we're totally listening. Kurt and I are both sitting here listening, taking all this in. Thank you very much to all the panelists for the excellent presentations and questions and issues. That's the comment on that.

Jeff Neuman: I understand but Dan, if you're talking to applicants, giving them that answer is not adequate. Just "How much would it cost for a third party?" the applicants go "Well, okay, how much is that?" And the answer is "I don't know."

Dan: Right.   So we can refer back to that we've kind of asked and answered this.   It's been a back-and-forth and we said "You guys are the experts at this."   And we've also said we're doing this RFI right now on the EBERO to try and provide some guidance and give some further feedback on this in response to this very question.   So we're working to get more information on this and thank you for the comment.

Brian Cute: Okay, my panelists want to say some things.   I'm going to ask you to keep it very brief, thank you.   Okay, Antony?

Antony Van Couvering: Yeah. Dan, the EBERO really assumes one size of registry.   It is not a good way to go.   It is a very expensive way to go.   We need to find appropriate registries for appropriate sizes.

Brian Cute: Richard.

Richard Tindal: I agree with Jeff that more data would be useful, the EBERO data's useful.   But I really push back, Jeff, on the notion that we just don't know.   Talk to providers.   Ask registries what it would cost to transition for them for this sort of profile.   If you do your homework as an applicant I think you can come up with quite

reasonable estimates for what a transition of your TLD would cost and what operation of your TLD would cost.

And so I really push back on the notion that we don't have adequate data now.   Every applicant should be doing their homework now to make a reasonable and accurate assessment of what their COI fund should be.

Brian Cute: Thank you. Adrian?

Adrian Kinderis: Yeah, and I just wanted to add that hopefully it's ICANN's perspective, Dan, that if someone does make a reasonable and accurate calculation that no one at ICANN could argue that, which is something I've posted before. It's "If I've done my calculations and here's my justification for it," how can some evaluation panel argue or come back at that?   Because you're the one that's (inaudible) if I've done my homework.

So as long as ICANN's perspective is if you've provided justification and the calculations and you've put your thought into it as Richard said, I would assume that that should be hopefully enough in a reasonable sense. And I think that's what I'm reading from the Applicant Guidebook, the perspective that ICANN's coming from here. Play smart, justify your answers and you'll be okay. ICANN's not looking to fail you.

Brian Cute: Thank you. We're going to go to the next online question and then back to the mic. Online?

Francisco Arias: This one is certainly more a comment than a question by [Roman Skol]. He says "Us non-US, -EU applicants don't have relations with banks carrying global AAA rating. They are likely to pay the full amount of the COI instead of a letter of credit. So such a fund is beneficial. Now only US, EU .brands but US, EU applicants can acquire a letter of credit cheaply."

Brian Cute: Was that a question or a statement? I was trying to follow the form.   If anyone wants to reply on the panel?   I couldn't understand if it was a statement or a question. It was a statement, okay. Let's go to the mic.

Steve DelBianco: Hi, Steve DelBianco, NetChoice. The topic here is comparing COF and COI, so if you bring up the addendum that's used, I'm going to ask the three of you that run zones today – bring up the addendum, the table that shows the comparison, please… Who's running the slides?

                           So in there, I wanted to ask the three of you that run zones today whether it's reasonable to assume complete linearity based on the number of domains under management?   Because the table assumes, I have it hear, that if you go from 50,000 names in the

third year to 100,000 names in the fourth row, you double the cost of registry operations.

This table, the one that's used – the addendum table that's used to compare these two proposals assumes complete linearity on the number of names, and when I've installed and built servers my whole life it doesn't cost twice as much to go from 100,000 records to 200,000 records.

I imagine it's two orders of magnitude or three orders of magnitude before I'll get a doubling of costs like that. And this is ICANN. We are professionals who run servers like this. It's inexcusable for us to get this part wrong and then use bad numbers to base what we're telling the world we're doing for them. We lose credibility instantly with that.

So when you find the addendum, do you see the row for third-year domains under management – 50,000 to 100,000? You have doubled the cost. Is anybody up there willing to stand behind that number?

Brian Cute: The table is constructed on a year-by-year basis so there'd be a cost of 25,000 DUM of $75,000; and year two at 37,500 a cost of $90,000. It's a sequential rolling of the costs if you will year to year.

EN

Steve DelBianco: No, no, Brian – just compare third year for the row that shows 50,000 names under management and 100,000 names. And then go over to the column under the third-year CORO and you've doubled the costs. The implication is that it costs twice as much to host a server with 100,000 names as a server with 50,000 names. And I've asked a question to the panel to those of you that run zones, and that includes you, Brian – are you going to stand behind that number?

Brian Cute: The point…   This is a straw man. It shows potentially different costs. You could have a $2 cost per name, you could have a $3 cost per name – it's illustrative of part of the problem here. You're going to have registrants that are calculating their own costs and to some degree you have to… To Adrian's point, there should be a level of confidence in that at the same time with the incentive to gaming there's some uncertainty. So this is just illustrative of the fact that you can have different results depending on the-

Steve DelBianco: It's not predictive. It's showing how you can just make shit up.

Male: I understand now why you (inaudible). I understand.

Brian Cute: Richard?

Richard Tindal: I don't run a zone but I used to, and I hope to one day and you're right – it's not linear in my opinion. So there is this thing called scaling and so I think you make a very good point.

Steve DelBianco: And the point of it would be that maybe the numbers, people don't really have to just lowball. Hopefully smart people in the ICANN community will offer to run emergency failover services, they'll come up with fixed-price offers; and this will allow an applicant to show "I have a contract here from this not a bank, not an insurance company but a contract from a provider who will step in and run up to a million names for $15,000 a year or something."

So there are other ways we might be able to solve under the COI, and I just thought that that addendum, if that's used to justify COF it wouldn't work. But now Brian, I do understand what you meant. Thank you.

Brian Cute: Okay, next Ron?

Ron Andruff: Good morning, Ron Andruff. I think Antony's walking down the right road here. It's quite clear that the registries that run the internet today are all quite solid. Jeff made the comment that they've never crashed, there's never been a problem – it's all good.

It's good to have something in place in the future should something happen. I think we all agree with that. But clearly it'll be the newcomers to the market that will be the most risky, not the ones that run the internet today. So Antony's comment about giving let's say the registry the opportunity to go to one operator and have a second backup operator is probably the right way. It's the most inexpensive way and the most intelligent way.

But I think here we are – we're working through this issue. I think the other point I want to bring out is Paul: I appreciate your passion, Paul, when you talk about this defense of brands and picking the pockets of brands. But between the brands and the highly shaky, scary operators that don't have any money are a lot of SMEs that can run registries. And tying up those kinds of funds that could be used for marketing or for other purposes, because brands don't want to have to put $50,000 away if they can just make a phone call to the bank and draw a letter of credit.

SMEs can't just make a phone call and draw a letter of credit. They've got to take real money and put real money on the side. So I think it's really important to recognize here it's not just about big brands and them having a problem for them to put cash on the side. Today I got up and BBC have doubled their profits because it's higher gas at the pump, so now they're making billions of dollars. Well, I'm sorry that they may have to park some money.

But for SMEs, they really need to have the flexibility and I think this is the critical factor. But I will finish my comment by saying

Brian Cute: Sure. Paul?

Paul McGrady: Sure. I appreciate the comment, and if this were a discussion three or four years ago and the option weren't the standby letter of credit which has been in the Applicant Guidebook for a while now; and if it weren't a clear $50,000 more per string maybe this could have gotten through.

But what we're talking about now is just a clear cut wealth distribution from .brands to SMEs and again, this isn't housing for people who can't afford housing, this isn't education for people who can't afford education. I'm sure the BBC or whomever is very profitable. What we're talking about is a corporate welfare transfer from big corporations to small corporations who need marketing money. It's not a compelling argument.

And since I have the microphone I wanted to respond to the voice on the phone who questioned whether or not this is an insurance fund, questioned whether or not this is insurance or some other creature. And let's assume argue endo for the moment that taking premium dollars and putting them into a risk pool, and having casualty events paid out of a risk pool is somehow not ensurance –

let me paint you a rosy picture of how long this will tie up the program.

A complaint could be filed in January – the preliminary injunction entered January 15th and answer in February. Discovery will close probably March, 2013. Summary judgment briefs where this issue will be decided about whether or not it's an insurance product will be due July, 2013, and probably a decision from the court sometime in October, 2013. That's a very rosy picture of how long this is going to take.

So again, for those of you who have business models who depend on getting this program launched, this is not the issue for you. This is a last-minute distraction and you really have to ask yourself is this last-minute distraction, what's the compelling argument that you're willing to put your business model on the risk for to 2013, 2014, 2015 as the new launch date? Is it really the redistribution of wealth for marketing funds for companies that are underfunded? Is that a compelling enough interest to do this?

I don't think that the social benefit of redistribution of wealth from big companies to small companies is that compelling issue that we're looking for, for a last minute change.

Antony Van Couvering: Paul, I'm sorry. Paul, you cannot summarily dismiss small- and medium-sized enterprises and talk about this redistribution of wealth. It's a little bit insulting and I think you should measure your words in that regard. There are many who have the capability

to do things but they might not have the deep pockets of corporations, and you're arguing and putting a scare tactic out there about how things are going to get delayed because big corporations don't want to park money; and they could make a phone call and take some of their credit line and have it applied.

It's a very, very how would I say… discomforting comment. Thank you.

Paul McGrady: I'm sorry for being plain spoken about this. It is just the reality. What we're talking about is a last-minute change in the Applicant Guidebook which solely benefits people who don't have sufficient funds. We're not talking about applicants, small businesses who have sufficient funds to apply under the current terms of the Guidebook. If you have sufficient funds to apply under the current terms of the Guidebook then it's not a problem.

What we're talking about are people who do not, and if somebody is insulted by the fact that this is what it is, which is an additional cost for people who can get a letter of credit, I'm sorry that that insults you. But again, this isn't a compelling issue. This is not basic human rights – it's not housing, it's not education, it's not something like that. It's simply a wealth redistribution at the last minute and it's a bad idea.

Brian Cute: Folks, we're getting very close on time. I do want to get all the questions. I ask you to be please very succinct. Can we read the next online question and then we'll go back to the microphone?

Francisco Arias: So a question from Lucas: "What is the logic behind requiring us COI or COF or any grand theme to a single registrant, one that will not need transit such as .brand? Just because a .brand can obtain a letter of credit doesn't mean it must be required to."

Brian Cute: I think if I can summarize the comments earlier from the panelists that a single registrant model may be one of the models where the necessity for a significant tie-up of funds to effectuate a transition is not necessary. Have I summarized that? Okay. Back to the mic.

Male: Thank you, Brian, and I'll try to be brief as well. I mean first of all, the higher-level thinking here is that I'm seeing a lot of… I mean the ICANN responsibility being shifted to a third-party vendor, I mean for other projects like trademark clearinghouse and others. But I'm seeing, I mean ICANN is taking a step up and trying to manage this fund or liability, whatever we are going to call it, and put this thing on their own shoulders – I'm not sure whether we should applaud for that or we should… I mean you

know, really to think twice on what are the liabilities and risks being put on the ICANN shoulder?

And let me also add to what some other gentleman has said about whether this should be an insurance fund or others. We are looking at, for example, the registrars are now being requested to have a $500,000 US fund. And let me tell you – the practice, particularly in Asia…   I mean the sort of a non-US or non-European practice is that since 2000, and I'm not sure when this measurement has been put in place – this has been very difficult for the registrars, at least some of the registrars from the developing countries to get that insurance, that credit line from the insurance companies.

So I'm not for insurance. I'm not for a cash base. I'm just throwing some practical information. I'm saying maybe an insurance company in Asia-Pacific will not know what is the domain names still – they don't know. Those are intangible assets, nothing can be shown on the table. It's very hard for them to work with a private insurance firm maybe at this point.

So go back to that higher-level question: is this for the ICANN to find a multinational insurance corporation who has the filtering of Asia, Europe? I mean and then that particular one or multiple insurance service providers can help on that, but let me wrap up by saying I'm not saying cash-based like the COF. I like simple ways to do things. Maybe a $50,000 cap and a cash deposit at this point for the first round is the best approach to help everyone to move forward. So I'd just like to finish up with that.

Brian Cute: Folks, to the extent that you're comfortable staying for the next few minutes I would like to get through all the questions. Adrian, briefly?

Adrian Kinderis: Yeah, the (inaudible), I think that no matter what mechanism is chosen that globally everyone should have access to that. And so it wouldn't be enough that companies in North America could have access to insurance if that insurance fund didn't reach someone in Africa or refused to ensure someone because they're from a location and then others had an advantage. I'm just trying to summarize. That's what I got out of what you said which I think is a fair enough remark. Thank you.

Brian Cute: Thank you.

Tom Scopazzi: Tom Scopazzi with NCC Group. I guess I owe an apology because I' not too good with the whole public comment process but this is something I've been working on a little bit in order to try to find a private insurer who would do this. So actually I just wanted to pose a question to Paul and Ken who brought up the concern that it's going to be hard to find a private insurer who would be interested in this. So what would you think if there was an A-rated, billion dollar global specialty insurance company

who's interested in underwriting both large brands as well as underwriting individual private applicants who can't get a letter of credit?   And if this solution was able to fit into the existing parameters of ICANN, acting as a letter of credit, would that be something you guys would be open to?

Brian Cute: Paul and then Ken.

Paul McGrady: If you can find an insurance company that will insure a .brand at a premium price for what it costs to get a letter of credit issued against the currently open line of credit that that company has, which is probably somewhere in the $1500 to $2000 price range I think that's an interesting option to discuss.   I don't think you're going to find that.   And you're certainly not going to find it between now and January 11th and you won't even be able to arrange for that.

A letter of credit is based upon creditworthiness, not based upon insurance risk profiles – two different sets of underwriting.   And so again, unless we're prepared to agree to postpone the launch of the TLD for the two years it would take to sort through that issue I just think the issue is a nonstarter.   It would have been an interesting idea to kick around in 2009.

Male: What if that insurance company's already been identified? What if that insurance company has been identified already?

Paul McGrady: That insurance company's been identified and they've already issued a premium quote to all the .brands that are going to apply?

Male: No, but they need financials from applicants in order to determine that, and so I can't guarantee that this would be the same as a letter of credit but what I could say is that they would be underwriting the risk individually for each applicant. So Cisco would be underwritten differently than a startup, so the assumption there is the premiums would be at least market-driven as opposed to a flat fee where the risk is pooled as opposed to transferred to an actual insurance company. And this pulls ICANN out of it and it's done by a true private insurance company.

                               So I don't know if it's actually going to match a letter of credit but it's definitely not going to be $50,000 for Cisco versus $50,000 for shaky startup.

Paul McGrady: We're talking about a hypothetical which doesn't exist within the timeframe that doesn't fit.

Male: It's not a hypothetical.

Paul McGrady: Most insurance purchases and things like that are inherently Board decisions and all that sort of thing. The Applicant Guidebook, which has been in effect for a long time and upon which our clients are making decisions – and I say "our clients" in the sense of .brand folks, not necessarily Greenberg's – are making decisions to talk about a standby letter of credit. And we are in the eleventh hour; January 12th is just around the corner. And so again, we're talking about a hypothetical that there's simply not time to implement.

Brian Cute: Ken, if you could reply briefly and then we have two more questions and we'll be done.

Ken Stubbs: Yeah, Brian. Can you hear me alright?

Brian Cute: Yes.

Ken Stubbs: Okay. Well, first of all the concept is intriguing. I would want more information – there's no doubt about that. My biggest concerns at this point in time are for the significantly large numbers of people that have interest in applying who are located in parts of the world where so much of what has been proposed just

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doesn't make sense.   The comment the registrar made about difficulties in obtaining bonds – please understand you're in Africa, to the best of my knowledge there are only two registrars serving the entire continent right now.   My feeling is part of the reason for that is the barriers that are out there.   Also I just think that it's a difficult situation that needs resolution hat's equitable. Thank you.

Brian Cute: Thank you, Ken.   Ray?

Ray Fassett: Thank you, Brian – Ray Fassett, Dot Jobs.   I think Antony is on the right track here.   Looking at what is the cost to transition versus what it is now is a three-year rollup of costs of these five elements, and then saying that three-year rollup is equated to a one-time cost of transition – that doesn't make sense to me.   We should be looking at a cost recovery model and a three-year rollup does not seem to me a cost recovery model of a one-time transition cost. That's one.

Two, we've had a lot about estimates going into the application process.   Based on my experience, at some point when there are projections or estimates involved there needs to be a true-up, right? And that is when you compare actual costs to estimates.   How does that part get handled I guess is probably more of a question for staff: is that an annual thing?   Is this a compliance issue?   Is the eventual successful registry operator required to provide copies of

invoices to substantiate the actual costs versus estimates? Does that only happen on ten-year renewal or is it an annual mechanism? I think these are things applicants would want to know prior to getting into the business.

And then third, Richard had a question and I haven't heard it answered yet: is the $25,000 annual cost to ICANN, is that supposed to be calculated as part of the three-year rollup to cost recovery one-time transition fee?

Brian Cute: I believe the answer to that is yes, but Dan, you're in a better position. The $25,000 annual ICANN fee would be part of the cost structure under the COI formula, correct? It'd be separate? Could you clarify please? Sorry, thank you.

Dan: Yeah, mostly I'm coming to the microphone to thank you guys for this work. We've been taking notes and these questions and issues beget some more that could get us to some final conclusions about that, so I think that's good. So the question is would ICANN continue to collect this $25,000 fee after a registry ceases operations?

Brian Cute: Is the $25,000 annual ICANN fee, is that part of the registry applicant's calculation in its cost structure under the COI as proposed?

Dan: No, no.

Brian Cute: It's excluded?

Dan: Right.

Brian Cute: Okay, thank you. Last question.

Werner Staub: I wish first to thank you for having made that proposal, because the proposal is certainly better than the potential way of interpreting the current COI requirements. The COI requirement is highly unfair and especially to those who try to do a useful TLD and actually have a community to serve.

                              Now, we're at the eleventh hour as was correctly said, and it is also true to say that with respect to risk funds we already have one. The calculation of the ICANN fee contained an explicit statement that 30% of that was actually a risk premium that ICANN put into its budget. So I think indeed the money is there somehow, and with the amount of money that goes into that fund by single registrants' TLDs that actually do not have anyone to really protect other than themselves.

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I don't think we would be short of money. And certainly we have maybe talked about continued operations but maybe we may just have a compliance guarantee fund in some cases. Many organizations require a deposit for compliance cases to be made – who knows? We can talk about that later. This could be consensus policy in the future as to make sure that appropriate guarantees are posted by registry operators who have actually something to lose in case they wouldn't be compliant. I don't think that's most important now.

I think if we cannot get through with this because we lack time we have to look at the way the existing language is interpreted. And that is of course a question of appreciation so we have to have a couple of guidelines, and one of the things that I didn't hear is that the transition really of a registry will happen rarely but also costs much less because if you say "It's just for survival mode," then there is not much to pay for. And if there is actually activity such as the figures that were stated in the documents then there would be people lining up to take it over and pay for it. So what are we really trying to do?

Brian Cute: Thank you very much. Since you've all been very indulgent on the time I'm going to give each of the panelists a very brief closing statement and then we will close. Antony.

Antony Van Couvering:	Thank you, Brian. And thank you, Werner, for some good points. I think it's been very interesting to have these different models proposed but I believe that in the interests of not delaying things, what we can do is keep the current COI requirement but better understand the cost basis. I would encourage ICANN to allow for instance Adrian and I to make an arrangement – we're both reputable providers – whereby if one of our clients failed and we didn't take it over, which we already agreed to do, that he would take it over or vice versa. I'm not sure he'd agree to that but I imagine I could find someone to do that.
	There's no reason to rely entirely on these emergency backend registry operators. You ought to be able to find a reputable provider and get a quote for how much it would cost you, and include that as your amount for your COI. That would be my thought on how to solve this. Thank you.
Brian Cute:	Thank you. Adrian?
Adrian Kinderis:	In the interest of brevity I'll pass, but just to say I think that the theme here is we're not looking with one eye opened. It's not broken but if we can enhance and tweak it and find something else then that's good but it shouldn't delay and it shouldn't impact our process going forward.

Brian Cute: Richard? Oh, sorry – Dan?

Dan: If I could please, thank you, just to quickly answer Antony. I just wanted to say we did look into that initially and I think the complication it raised is if you, Antony, were to say that Adrian was your backend and that would take care of the continuity requirement we'd have to both evaluate you and evaluate Adrian, so it would kind of complicate the evaluation process.

And we'd probably need some contract or some enforceable obligation against you and against Adrian so it just sort of created more complexity. It was one of the options we looked at as "Let me just designate somebody else who would take over in the event of failure," but it created those complexities: we'd have to evaluate and make sure that they were okay.

Remember a couple years ago, Francisco could talk – we talked about having this, like a certified backend backup operator thing. And we talked about that; it was one of the things that was worked on during this program a couple of years ago.

Brian Cute: Antony and then Adrian.

Antony Van Couvering: Good point, Dan, but that's effectively what you're doing with the EBERO. Unfortunately what you're doing there is you're really

limiting the pool and you're making it expensive. The emergency backend registry operator is in fact a certification if you choose to do one of those. I suggest that there are a number of different types of registries based on volume of names if nothing else that would be sufficient, so given your volume estimates you ought to be able to pick one. And if they're low, which will be the case for many, then the costs will be low. It shouldn't be on a per-name basis.

Again, as has been pointed out many times now, the number of names doesn't scale to the cost. I mean the difference between zero and 1 is a lot less than the difference between 1 and 100,000. So if you're flexible in that backend registry, which is effectively a certification program, then this ought to be able to be done. Thanks.

Brian Cute: Adrian?

Adrian Kinderis: Yeah, I just wanted to highlight that I think a certification program is probably a reasonable step forward if this is going to be a rolling program when we get to that point. So one takeaway of ICANN, I remember if you go back to the transcript I brought up registry certification in the Public Forum and Vint said it was a great idea, and the ultimate authority at the time – Kurt – said four years ago "We won't have enough time to get it done."

So anyways, that's how it turned out but I think registry accreditation is probably something that should, for a number of reasons and this is one, be put back on the table.

Brian Cute: Richard.

Richard Tindal: My concluding comment would be that I think what's in the Applicant Guidebook now works. I think applicants should do their homework. They should talk to multiple providers. I think that when you do that you'll find that this thing isn't as complicated as some people are leading you to believe and certainly the numbers you're going to deal with are not as scary as some people are leading you to believe.

Brian Cute: Paul.

Paul McGrady: No final comment other than to thank everybody for the great conversation and tell you to have a good day.

Brian Cute: Thank you. Ken?

Ken Stubbs: Yeah, thanks Brian. I'd first of all like to thank everybody who showed up and most definitely want to make sure that the mp3 of this session is available as soon as possible because there are a lot of potential applicants in time zones who will want to have the opportunity of listening to the comments. Thank you.

Brian Cute: Thank you, Ken, and just a couple of observations. Again, the importance of this program is protecting registrants in the event of a failure and that's paramount, and I again thank and commend ICANN for opening up the public comment period and this workshop even at this late hour. This is too important an aspect of the program to not discuss.

                               Also it strikes me as the need for business certainty. With the uncertainties we've discussed today about the two respective models and the proximity of the start of the round we need some certainty as best as can be provided by ICANN. Certainly the importance of accessibility for new gTLD applicants that there are not any unnecessary barriers to entry is a paramount consideration but lastly also, this shared opinion that this should not in any way result in a delay of the opening of the round as scheduled.

                               So with those thoughts all I would do is encourage all of you to provide responses to the public comments on these two very important issues so ICANN has all of your inputs as we move towards January. Thank you, all.

[Applause]

[End of Transcript]